

US V Scott Myers (Rev

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 * * * * *

4 UNITED STATES

Plaintiff

5 VERSUS

CR-03-10370-DPW

6 SCOTT MYERS

7 Defendant

8 * * * * *

9
10 BEFORE THE HONORABLE DOUGLAS P. WOODLOCK

11 UNITED STATES DISTRICT COURT JUDGE

12 REVOCATION HEARING

13 FEBRUARY 22, 2007

14 APPEARANCES:

15 DAVID TOBIN, ESQ., Assistant United States Attorney, United
16 States Attorney's Office, One Courthouse Way, Suite
9200, Boston, Massachusetts 02210, on behalf of the
17 United States

18 JONATHAN SHAPIRO, Stern, Shapiro, Weissberg & Garin, LLP,
90 Canal Street, Boston, Massachusetts 02114-2022, on
19 behalf of the Defendant

20 Courtroom No. 1 - 3rd Floor
1 Courthouse Way
Boston, Massachusetts 02210
21 3:55 P.M. - 4:35 P.M.

22 Pamela R. Owens - Official Court Reporter
23 John Joseph Moakley District Courthouse
1 Courthouse Way - Suite 3200
24 Boston, Massachusetts 02210

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1 THE COURT: well, do the parties have anything
2 further that they want to offer here?

3 MR. TOBIN: Your Honor, good afternoon. The United
4 states has no additional evidence. If the Court is so

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5 inclined, I'd like to be heard on the appropriate disposition,
6 but we have no additional evidence, Your Honor.

7 THE COURT: Well, let me then ask Mr. Shapiro. As
8 a formal matter, there is a violation. That is, he was
9 required to participate in the inpatient treatment and observe
10 the rules and he didn't.

11 Now, whether the rules were the rules of Martinette
12 is another matter. But he didn't as a formal matter comply
13 with that condition. Isn't that the case? I mean, he got
14 booted out.

15 MR. SHAPIRO: Well, I have argued before that to
16 the extent they were technical violations, they weren't a
17 substantial violation of the conditions. I assume you ruled
18 against me on that?

19 THE COURT: Right.

20 MR. SHAPIRO: And to the extent that the Court has
21 found a violation, that's true. I would say that the violation
22 was, at best, a very, very minor violation. And that looking
23 at this defendant, I think that there is a lot of positive
24 information.

25 THE COURT: Well, but that's something that I would

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1 take on disposition. I'm really dealing separately with the
2 question of violation and then disposition here. And I want to
3 understand whether or not there is any dispute that he had been
4 ordered to participate and observe the rules of the facility
5 and to reside there unless he was otherwise -- or reside there
6 for six months.

7 MR. SHAPIRO: If you're asking me, I would say I
8 would rest on my prior argument. But you've already found a
9 violation, so I don't think there is anything I can say. The

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10 only thing I have to say is I'm not clear of whether or not --
11 I mean, there are a whole host of specific violations that were
12 in the letter from the counselor to Mr. Marshall, beginning
13 with violating the rules with respect to visitation. There
14 were other alleged violations with respect to cars. There were
15 some violations relating to lateness. Mr. Myers admitted he
16 was late on a number of occasions. And on a couple of
17 occasions, he recalled why he was late. There was a legitimate
18 excuse. So, I'm not clear which of these approximately seven
19 or eight specifications -- actually, I think there were eight
20 specifications that the Court has found constituted a
21 violation.

22 THE COURT: I don't have to find any of them.

23 MR. SHAPIRO: Excuse me?

24 THE COURT: I don't think I have to find that any
25 of them constitute a violation. But what I find is that the

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1 defendant was required to leave here. I think it's fair to say
2 that I find the circumstances capable of exploitation by both
3 sides: By Mr. Myers, who seems to me to be somewhat
4 manipulative, looking at all times for opportunities to extend
5 beyond what is the general understandings not explicitly set
6 forth of the program, and the opportunities for arbitrary
7 termination which this set of circumstances evidences to me.
8 But I'm not making an internal -- I am not sitting to determine
9 the appropriateness of the rules that they have or the excuses
10 that can be offered. He was required to participate in that
11 program. He was terminated. Consequently, he is involved in a
12 violation of the terms and conditions of supervised release.
13 There aren't those subsidiary rulings that I have to make under
14 these circumstances.

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15 I listened to the evidence and listened to
16 Mr. Robinson and frankly got a taste of what the place was like
17 and that they got frustrated with Mr. Myers. He was always
18 pushing and always offering excuses. And, so, they didn't want
19 to have him there anymore. And that they didn't want to have
20 him there anymore means that he's in violation. That's my
21 ruling on that.

22 So now we're really talking about so what do we do
23 about this. And I think I'll hear first from the Government
24 and then I'll hear from you.

25 MR. TOBIN: Your Honor, the Government recognizes

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1 that although there are Guideline recommendations with regard
2 to supervised release revocations, that they are not bound nor
3 have they ever been binding upon the Court. However, they may
4 be of some benefit to the Court. And as I understand it, the
5 Guidelines for this type of violation with regard to this
6 defendant are 8 to 14 months. The United States is going to
7 make two requests of the Court, two recommendations, if you
8 will. We're going to ask that you impose a Guideline
9 recommendation at the very lowest of the applicable --

10 THE COURT: Why would I do that? You listened to
11 it as well as I did.

12 MR. TOBIN: I did.

13 THE COURT: And I understand, I think, what is
14 required of someone in the inpatient setting and that it is as
15 important for the institution to work that rules be followed
16 even if the rules aren't particularly nuanced. But I'm going
17 to send somebody to jail because he didn't -- he brought his
18 car in on occasions that he had no excuse?

19 MR. TOBIN: Your Honor, if I may, obviously it's
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20 your call and I certainly have to defer to the Court and I
21 would choose to do so, anyway, in this matter. I think the
22 problem here is not that he chose to to bring his car on camp
23 or that he came back late or possibly that he even violated
24 other rules and regulations. I think the real problem here
25 with regard to this defendant is quite simply that he refuses

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1 to submit to the authority of the Court, United States
2 Probation, or any authority figure. He is constantly -- and I
3 looked back to the violations in September through what we
4 experienced here when he was at the Boston house. He is
5 constantly pushing the envelope. He is constantly needing to
6 be in control. He didn't like his therapist. So, after a
7 month or so, he gets a new therapist. He has to be in control
8 and manipulate the situation. He has yet to say to himself or
9 to this Court, "I recognize that I have made a mistake, that I
10 have committed crimes, that I need help, and I put myself at
11 your mercy."

12 THE COURT: Well, wait a minute. He's already
13 committed the crime and he's already been sentenced.

14 MR. TOBIN: He has not --

15 THE COURT: Now we're talking about what's the
16 proper -- from my perspective --

17 MR. TOBIN: Yes, sir.

18 THE COURT: What we're talking about is what's the
19 proper mechanism for rehabilitation for someone like that?

20 MR. TOBIN: Well, I --

21 THE COURT: I think I understand the mindset of
22 Mr. Robinson and frankly the mindset of Mr. Myers. On the
23 other hand, I don't think that there is great value in my
24 policing minor infractions. If Mr. Myers is in the posture

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25 that he's in and doesn't want the help that's available, then

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1 perhaps what I'll do is simply say, "All right. He doesn't
2 have to go to residential treatment." That was for his
3 benefit. He doesn't -- he's got a better idea for his
4 benefit. If he violates conditions about using, I'm going to
5 throw him in the slammer, no questions asked. And, so, if he
6 wants to test the limits of this --

7 MR. TOBIN: If I may, most respectfully, I think
8 the problem with that is that empowers Mr. Robinson (sic).

9 THE COURT: Oh, it does. It empowers him to say
10 "I'm in charge of my own life and I'm going to pay the
11 consequences."

12 MR. TOBIN: But what are the consequence?

13 THE COURT: The consequences are that he has
14 available here a substantial custodial time period. I have in
15 this setting someone who rejects the opportunities that are
16 provided because he wants to play games with them. And the
17 games are, you know, childish.

18 MR. TOBIN: Small and petty and minor perhaps.

19 THE COURT: Okay. But it seems to me that
20 exercising my authoritarian powers in this context doesn't
21 advance any rehabilitative idea.

22 MR. TOBIN: And where we disagree, Your Honor, most
23 respectfully, is that if we were to say or if the Court were to
24 say "we're not going to send you back to a residential
25 facility, we're not going to send you to jail, we're going to

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1 continue with other types of supervision by United States
2 Probation," I think he'll walk out of here, I submit, and think

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3 "I won. I didn't like the place. I didn't like them telling
4 me what to do. I basically was able to get out of it and
5 there's no punishment. And the Judge is once again threatening
6 potentially with jail time."

7 THE COURT: No. I think the difference here is
8 this: He's on his own, you know. I'll have supervision. And
9 the supervision will be constant drug testing. The resources
10 of the Court will not be devoted to servicing him in some form
11 of program. And if he is -- as I think he may --
12 insufficiently familiar with the trouble he can get himself in,
13 he will and then he'll pay the price. So, it's a straight-
14 forward, frankly, kind of alternative.

15 I have been inclined to encourage people to
16 continue with programs at some cost, costs to other people who
17 could participate in these programs, too, cost of the resources
18 of the Probation Office. But I don't see a reason to do that
19 here. Because at the end, I'm not sure I want to spend the
20 resources of the Court on Mr. Myers in some other setting.
21 Because I'm not simply -- you know, if I put him in prison for
22 eight months, which is what you're asking --

23 MR. TOBIN: Yes, sir.

24 THE COURT: -- then ordinarily I'd say after the
25 eight months, you'll do "X." Then you have an inpatient

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1 program that you're going to finish or you're going to have
2 some counseling or there's going to be some sort of sober house
3 or something like that. I'm not sure that that makes any
4 sense. And, so, what you're asking me to do is send him into
5 prison for eight months because of car infractions and coming
6 back late.

7 MR. TOBIN: But we agreed to some extent, Your

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8 Honor, in this respect: We do not believe that the resources
9 of the Federal Government, the Judiciary, this Court and
10 Probation should be spent on this individual. So the second --
11 I mentioned originally I was going to ask the Court to do two
12 things. One was to give a low bottom Guideline incarceration
13 and then to have him free. We do not believe that he is
14 amenable --

15 THE COURT: Oh, I'm not cutting him free.

16 MR. TOBIN: Well --

17 THE COURT: No, you don't understand. He's going
18 to be under supervised release. He's going to have the
19 obligation to stay clean. And if he doesn't stay clean, he's
20 going to jail.

21 MR. TOBIN: I understand that.

22 THE COURT: That's clear. You know, it's as clear
23 as a color code.

24 MR. TOBIN: Yes, sir. But he seems to have come --
25 he had two problems originally. And I came to this case

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1 somewhat late. He seemed to be non-compliant. Based on what I
2 read in September, he was non-compliant and he was using drugs.
3 To his credit, at least thus far, he seemed to have come to
4 terms with the drug use. He has been clean, if you will, had
5 negative testing. And he's had two since the last time we were
6 here. He may well have conquered that. What he hasn't
7 conquered, what he hasn't come to terms with is the
8 non-compliance, the attitude, the pushing of the envelope.

9 THE COURT: But what is that to me? I mean, apart
10 from the idea that it's a belly-bumping exercise --

11 MR. TOBIN: I understand your point. And he's not
12 committing more crimes or taking drugs while in the CARE --

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13 THE COURT: If he's got an attitude, frankly I
14 don't really care. What I do care about is whether or not he's
15 dealt with his drug problem. That's why I put him inpatient.
16 I didn't put him in inpatient because I thought that I ought to
17 encourage the gainful employment of more counselors. I put him
18 in inpatient for his own good.

19 MR. TOBIN: Well, we believe that he can no longer
20 benefit. And I understand what you're suggesting is he doesn't
21 need more counseling, he doesn't need anymore direct
22 supervision. I mean, he needs drug testing. And if he messes
23 up, so be it. Our position is that still requires time and
24 attention by United States Probation that will be better spent
25 on individuals who are more amenable to rehabilitation.

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1 THE COURT: Well, I go back to the earlier point
2 that you made. I don't mean to hold you to any particular
3 language, particularly in the psych along which we all have
4 talked in this context --

5 MR. TOBIN: Sure.

6 THE COURT: -- because I use it, too. But you said
7 he will be empowered to believe that he's in charge.

8 MR. TOBIN: Yes.

9 THE COURT: Well, really, that's what I want him to
10 think. He's in charge. He's in charge of his life. He is
11 responsible for his own life.

12 MR. TOBIN: But the best way for him to move
13 forward with his own life, in my humble opinion, is for him to
14 get -- to be somewhat humble, not because I think it's good
15 that he needs to know. I want to make sure that he doesn't use
16 more drugs and make more crime.

17 THE COURT: This is the language of the Lenten

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18 season that you're giving me, not the language of how I ought
19 to deal with someone who is unwilling to comply with what
20 Mr. Shapiro properly says are all these kind of technical
21 violations -- not technical. But I look at Mr. Robinson and I
22 see what that would be like. It's like a prep. school short
23 story for the overbearing house master and the insolent
24 student.

25 MR. TOBIN: But, Your Honor, the --

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1 THE COURT: But that's not the stuff of -- as far
2 as I'm concerned, that's not the stuff of supervised release.

3 MR. TOBIN: I understand that point and I think you
4 make the point well and I accept it.

5 The point I'm trying to make is this: This
6 individual was ordered by the Court to undergo and to
7 participate in this program and to graduate. He failed. And
8 he failed not because -- in my humble opinion, the evidence is
9 that he failed because of his attitude and his desire to try to
10 cut corners, not because of the Martinette sound there, "Oh,
11 it's probably not the best one facility." The point is he
12 failed. There was no punishment then. What you're suggesting,
13 most humbly, is that there's really no punishment. So you went
14 there. You tried to cut corners. You did. You didn't like it
15 there. You got out. The real question now is what is the
16 punishment for disregarding the orders of the Court and the
17 requirements of the Court? It seems to me, most respectfully,
18 that there is no punishment. I don't believe that anymore
19 resources should be wasted on him. If he can move on with his
20 life, let him go to a YMCA and get counseling, let him do
21 whatever he wants. I think he needs to be cut free. We've
22 spent a lot of time and money on him. I don't think there's

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23 anything more that Probation can do for him. And then in
24 punishment, I think there is some added benefit to his future
25 life to go to jail and to realize "I'm in jail because of my

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1 own fault." But even if we assume that that's the language of
2 atonement and all of that and put that aside, the man looked at
3 the Court and he refused to be totally aligned and to follow
4 the dictates of the reasonable orders of the Court to go and to
5 do this. I have one Judge who once said to an individual who
6 left one of these facilities because he wouldn't clean a
7 toilet, I think the Judge looked at him and said, "I was in the
8 military. When they told me to do things, I did things." That
9 should be his attitude. It's not.

10 THE COURT: But nobody, I suspect, sent the Judge
11 to jail for eight months for --

12 MR. TOBIN: No, no. They didn't send him to jail
13 at all. The point I'm making is the Guidelines are eight
14 months. We don't think that he can be helped. We think that
15 it's a waste of time to put him back into Probation. And I
16 think he should be on his own. The eight months or some period
17 of incarceration is worthy because of the fact that he
18 disregarded the edicts or the dictates or the requirements or
19 orders of the Court. But I certainly understand your point and
20 we'll both need help.

21 THE COURT: All right. I understand the
22 Government's view. Mr. Shapiro?

23 MR. SHAPIRO: I'll be brief, Your Honor. But I
24 think that the Government's position is Alice in Wonderland.
25 Here we're dealing with -- the issue here is drugs are what got

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1 Mr. Myers into trouble with the law initially. He was addicted
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2 for years and years during which time he committed crimes and
3 that's one of the crimes that brought him before you. He was
4 on supervised release. And I think, as you said, the goal of
5 supervised released is to prevent him from getting involved in
6 the kind of problem that led him to break the law in the past.

7 Now, when he was here in September, he had gotten
8 back on drugs and that was his problem and he needed to deal
9 with that problem. And the Court did -- what I think the Court
10 appropriately did was to order him to go into a program where
11 he was going to deal with that issue, which he did. And since
12 that time, he's been drug-free. Yes, he did violate some of
13 the rules and regulations at this facility. But for the
14 Government now to say we're going to punish him for violating
15 these rules by sending him to prison for eight months and then
16 we're just going to cut him free makes no sense at all. I
17 think it's appropriate to keep him under the gun with respect
18 to drugs and I think at this point he will be the first one to
19 say, yeah, if he does use drugs again, he knows he's going to
20 go to prison. And that would be appropriate because that's the
21 trigger for future criminal conduct which is the purpose of
22 supervised release to prevent.

23 So, I would recommend that he remain on supervised
24 release as the Court has indicated it intends to do subject to
25 whatever drug testing the Court chooses to impose. Prior to

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1 the hearing the last time, Mr. Myers had gone to the CARE
2 program at the Court and indicated that he wished to enroll in
3 that. And I think he was at that time interviewed by the
4 Federal Defender. I think it was Cathy Byrne who did it. But
5 because of the pendency of this proceeding, that wasn't --
6 there was no followup. I think it would be reasonable to allow

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7 him to live at home with Ms. Sadler at the address that he has
8 lived at and, as a requirement, impose or require that he
9 participate in the CARE program which I believe requires
10 testing as well as --

11 THE COURT: Well, I'm not sure that I think even
12 that is appropriate here. You know, I hear from Probation with
13 what their view is, a limited program. It's a program for
14 people who are motivated and understand that these marginal
15 kinds of requirements are necessary in the character formation.
16 And that doesn't seem to be Mr. Myers to me. Mr. Myers seems
17 to me to be someone who wants to do it his way. And if he
18 does, then he's going to be riding bare-back if that's who he
19 wants involved. And if he falls off the horse, he's going to
20 get hurt. But that, it seems to me, is one way of dealing with
21 it. I don't -- I mean, I should hear from Probation on the
22 character and how it would work for someone like Mr. Myers.
23 But how one would formulate that or even whether I would be the
24 person to make that kind of -- apart from recommendation or
25 direction.

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1 PROBATION OFFICER: Well, Your Honor, I think you
2 could make that decision if you chose. I wouldn't make that
3 decision. I would refer his case to the Treatment Services
4 Unit for consideration into the program. I would just say from
5 my experience that Mr. Myers would be a forfeit for the program
6 given the extensive requirements, particularly in phase one,
7 where you're reporting three days a week and, you know, this on
8 time and different factors that Mr. Myers in the past hasn't
9 always exhibited an ability or a willingness to do so.
10 However, my experience with Mr. Myers really wouldn't have, I
11 don't think, much to say as to his acceptance into the

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12 program. I would have that be Supervisor John Hurdick's
13 decision and a few other members of that team to make a final
14 decision. But it doesn't seem like a very good match.

15 THE COURT: Let me understand the time period that
16 I have available to him here. Am I right that there are 35
17 months remaining --

18 PROBATION OFFICER: Yes, Your Honor.

19 THE COURT: -- to be imposed for purposes of
20 supervised release?

21 PROBATION OFFICER: Given the one-month sentence at
22 the revocation hearing, yes. So, it would be 35 months.

23 THE COURT: So, for a period of 35 months, he's on
24 his own vulnerable to getting himself in trouble by means of
25 using drugs or getting involved in some other violation of

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1 federal, state or local crime or any of the other conditions
2 other than the indicated conditions with a potential of me
3 imposing a Guidelines sentence if there is a violation and then
4 he has to go through it again.

5 Let's assume he commits a drug violation. Of
6 course I'll look at it in its own context. But I would be
7 inclined at this point to say it should be a high end
8 violation. So, that will be 14 months in prison.
9 And he comes out and he has another 21 months that's available
10 for purpose of supervised release and we continue to go through
11 that process in which Mr. Myers can interrupt successful
12 completion of supervised release. Everytime he violates, he
13 gets himself put in jail.

14 All right. So, Mr. Myers, I'll hear from you.

15 MR. MYERS: Thank you for hearing me, Your Honor.
16 I'm sorry to come to the Court, especially when the Court had

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17 extended its help to me.

18 I did have problems at the program initially over a
19 biography I wrote and I didn't want it to be circulated the way
20 that they intended to. And I asked that and that was the
21 reason why I changed that with my case worker.

22 I am responsible for being late. I do have valid
23 reasons why I was late. But still, if you ask me to go to the
24 store and get something and I agree to it, I should come back
25 rain, sleet or snow. And I didn't.

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1 I do need help. Yes. Right now, I'm in NA. I
2 have my sober groups I attend and my sober support.

3 Do I feel I should be in prison? I mean, to get
4 every -- you know, not to tell anybody, "Hey, look, I don't
5 want to bother you anymore." But come on, you guys have looked
6 out for me because I could have really been in some stuff with
7 -- I'm talking prior to even these violations. I do have a
8 drug problem. That problem is with me every day. And I need
9 to fight the drug problem. I do suffer from it. But with my
10 life, I can't. I know that I'm not coming back if I go out,
11 meaning using. And to have Probation supervise me for this
12 time, I need that. I need to be on my color code.

13 THE COURT: But when -- on your own terms?

14 MR. MYERS: Excuse me?

15 THE COURT: On your own terms? You know, whenever
16 you feel like you like the supervision, you go along with it
17 and when you don't like it, you don't?

18 MR. MYERS: No, a contract is you hold your end.
19 And I've been questionable about holding my end. But I'm
20 serious. I don't want to go. And there was a lot of things
21 that the Steven Miller House helped me with. So it's not like

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22 I went there and played around. I went there. I did do
23 chores. He spoke of atonement. I did my chores. They didn't
24 speak of me preventing like 11 other people from relapsing,
25 helping me into detox. and sharing my experience, strength and

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1 hope with those gentlemen in order for them to continue on and
2 which I do still to this day. Those things weren't spoke
3 about. It was a little problem between me and that gentleman
4 and he helped me. Because I don't care what comes at me. It's
5 my job to see a positive. Where I'm at right now is I need
6 supervision. I'm asking this Court to allow me -- just as the
7 Court did say, if I violate, I'm going to jail. And you're not
8 going to be slapping me on the wrist because you see that I'm
9 playing games. You're not playing them.

10 THE COURT: Well, you say you want to go to some
11 other program?

12 MR. MYERS: I'm saying, Your Honor, I tried. I
13 would like to go into the CARE program. I'd like to -- excuse
14 me?

15 THE COURT: You know, I have to tell you I know a
16 little about the CARE program. And it doesn't seem to be a fit
17 with your personality to be perfectly candid.

18 MR. MYERS: I spoke with, Your Honor, Sorokin. I
19 wrote him a letter. He had suggested that I come in. I had
20 known Mr. Sorokin before he became Honorable Sorokin. And he
21 thought it would be the best fit for me. And then I wrote him
22 a letter and told him when I was available to come to camp. I
23 told him I would come and I did come. I'll go to the program
24 to try to get in. If this Court is not inclined to allow me to
25 go to the program, I do need some counseling. Please allow me

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1 to go back to my AdCare counselor so that I can continue having
2 some support system. I don't want to ride bare-back, as you
3 say. I want to do this. And I don't want to come back before
4 the Court wasting this Court's time over stuff, especially when
5 you have went -- and when you handle something once, you don't
6 have to do it again. I'm clean. I just need a little help and
7 I'm not here to play with the Court.

8 THE COURT: what does that mean? what is going
9 back to your AdCare counselor? what does that mean from
10 Probation's point of view?

11 PROBATION OFFICER: That's out-patient treatment
12 services, typically once a week, whether it's a group or
13 individual treatment sessions. Unfortunately, Mr. Myers did
14 have, I think, a fairly good relationship with his previous
15 counselor who is no longer with the agency. And, so, I don't
16 know. I'm pretty sure you're aware of that --

17 THE COURT: Yes.

18 PROBATION OFFICER: -- but just to let you know
19 that he's no longer there. But that's what AdCare is. It's
20 more like once a week, an hour session. But then there's
21 attendance issues and things that go with that. But that's
22 what the program is.

23 THE COURT: what is the cost involved?

24 PROBATION OFFICER: well, that's something that,
25 depending on insurance -- if Mr. Myers has insurance, say Mass.

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1 Health, Mass. Health would pay for it. So it wouldn't cost
2 Probation Department anything. Otherwise, Mr. Myers is
3 employed. A co-payment -- piece-group sessions are certainly
4 cheaper than individual sessions. But again, that can also be

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5 based on contributions from Mr. Myers to pay for the services.

6 MR. TOBIN: Your Honor, if I may, the only problem
7 -- respectfully, the only potential problem with that is we're
8 back to where we were before which is let's say he has an
9 appointment with his counselor on Tuesday. He misses the
10 appointment. Then --

11 THE COURT: Well, no. You've identified -- I think
12 you are going in the direction that I have in mind. Does
13 AdCare terminate people from the program?

14 PROBATION OFFICER: AdCare wouldn't terminate.
15 They would send us -- they'd either call me directly or send me
16 a notice of a missed session like they did previously.

17 THE COURT: Well, let me look at it from another
18 perspective. Can Mr. Myers on his own choose to go to AdCare
19 without the supervision of Probation? Is there any reason why
20 he can't do that?

21 PROBATION OFFICER: I wouldn't think that -- I
22 can't see any reason why he couldn't do that.

23 MR. MYERS: I don't know of that relationship. I
24 really don't. I know that the counselor I was working with now
25 is on the Cape. And I was going to make efforts to see him at

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1 his position there and see if I could deal with him there. If
2 not, I was trying to get into the program here at AdCare which
3 is on Beacon Street in Boston because he's no longer there. I
4 did start building a relationship with a new counselor. And I
5 don't know if the Court orders it. If the Court doesn't order
6 it, can I get in myself? I don't know about that.

7 THE COURT: You say that someone can?

8 PROBATION OFFICER: Yes. My understanding is they
9 have other patients or clients outside of the federal clients

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10 with our contract. So, I don't -- I haven't worked with
11 anybody specifically that has done that, but I don't see why
12 that wouldn't be possible.

13 THE COURT: Well, I guess, Mr. Myers, I'm leaving
14 it up to you. You find your counseling. You find the
15 program. It's up to you. We've gone through a variety of
16 different experiences here. you can apply for the CARE
17 program. I'm not making it a condition of supervised release.
18 I think it's a good idea. But I thought that the Steven Miller
19 House was a good idea, irrespective of the kind of aggressive
20 -- passive/aggressive approach of Mr. Robinson. But you've
21 made some choices and the choices are to test the envelope.
22 And I am of the view that I'm simply not going to engage the
23 Probation Office directly through an order of my own in a
24 further kind of close supervision. You've made your choice.
25 You know what's best. And as a consequence, you will face real

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1 difficulties if you get yourself in trouble again. It will
2 mean jail. If you get involved in another crime, you use, and
3 they find out that you're using, I'm going to put you in jail.
4 And it's going to be a Guideline sentence. Now you know what
5 the Guidelines are: Eight to fifteen months here. And I
6 assume it will be the same Guideline for a violation.

7 PROBATION OFFICER: It would, Your Honor.

8 THE COURT: So that's what's going to happen.

9 Now, my own view is that you would do well to find
10 your program. But it's not going to be ordered as part of
11 supervised release here. I've done it. And you have your own
12 view. So, I'm taking you out. I am revoking. I am taking
13 out the condition of inpatient treatment and residence at a
14 six-month sober house approved by the Probation Office. I am

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15 leaving in place all of the other conditions. And you have got
16 a warning. And the warning is there won't be a question if you
17 come back here violating either of those major conditions for
18 me -- not technical conditions, major conditions for me --
19 using or getting yourself involved in another crime. That will
20 be virtually automatic jail time. Of course I'll consider all
21 of the sets of circumstances, but you should know what the
22 likely consequence is going to be. And now you do. But you
23 can't say "I'd like to have help" and then reject the help.
24 You can't say, "I'll do it my way" and then say "well, I'd like
25 someone else to pull me out on this." Not at this stage.

□ 24

1 So, for those reasons, I do revoke and reimpose
2 supervised release to 35 months. It's a long time. And you
3 better get your life in order on your schedule in your way to
4 meet these serious obligations.

5 Now, are there other issues that -- I'm sorry --
6 the Government or Probation want to raise with me here?

7 MR. TOBIN: No, Your Honor. I think that covers it
8 all. Thank you.

9 THE COURT: Okay. You should understand you have a
10 right of appeal and you'll want to consider whether or not to
11 exercise that right of appeal. But now you have nobody else to
12 blame, Mr. Myers, if something goes wrong.

13 MR. MYERS: Yes, Your Honor.

14 THE COURT: All right.

15 MR. MYERS: Thank you.

16 THE COURT: We'll be in recess.

17 MR. TOBIN: Thank you, Your Honor.

18 RECESSED AT 4:35 P.M.

19 CERTIFICATION

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20 I certify that the foregoing is a correct
21 transcript of the record of proceedings in the above-entitled
22 matter to the best of my skill and ability.
23 /s/_____
24 Pamela R. Owens Date
25 Official Court Reporter

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